

Oklahoma Health Care Authority

The Oklahoma Health Care Authority (OHCA) values your feedback and input. It is very important that you provide your comments regarding the proposed rule change by the comment due date. Comments can be submitted on the OHCA's [Proposed Changes Blog](#).

OHCA COMMENT DUE DATE: January 18, 2022

The proposed policy changes are currently in effect as Emergency Rules and must be promulgated as Permanent Rules. The proposed policy was presented at the July 6, 2021 Tribal Consultation. Additionally, this proposal was presented to the Medical Advisory Committee on July 8, 2021. Furthermore, this proposal will be presented at a Public Hearing scheduled for January 18, 2022. Finally, the proposed changes are scheduled to be presented as permanent rules to the OHCA Board of Directors on March 16, 2022.

Reference: APA WF # 21-12

SUMMARY: Purchasing Rules Revisions — The proposed revisions will re-establish agency-specific rules for purchasing and procurement. Revisions include provisions related to procurement definitions, procurement ethics and prohibited conduct, conflicts of interest, and procurement of goods and services and professional services.

LEGAL AUTHORITY

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; the Oklahoma Health Care Authority Board

RULE IMPACT STATEMENT:

STATE OF OKLAHOMA OKLAHOMA HEALTH CARE AUTHORITY

SUBJECT: Rule Impact Statement
APA WF # 21-12

A. Brief description of the purpose of the rule:

The proposed revisions will re-establish agency-specific rules for purchasing and procurement. Revisions include provisions related to procurement definitions, procurement ethics and prohibited conduct, conflicts of interest, and procurement of goods and services and professional services. **The aforementioned proposed rules were promulgated through the Emergency Rule process.**

B. A description of the classes of persons who most likely will be affected by the proposed rule, including classes that will bear the cost of the proposed rule, and any information on cost impacts received by the agency from any private or public entities:

External entities seeking to bid on a solicitation under OHCA procurement and OHCA employees and officers will be affected by the rules changes. This rule may place a cost burden on private entities related to costs that may be incurred by a bidder participating in a solicitation. No information on any cost impacts were received from any entity.

- C. A description of the classes of persons who will benefit from the proposed rule:

External entities seeking to bid on a solicitation under OHCA procurement will benefit from the proposed rule changes, as will OHCA employees and officers and SoonerCare members and providers, because the rule changes will facilitate more transparent solicitation practices and better meet the statutory and regulatory requirements for procurement through a state agency.

- D. A description of the probable economic impact of the proposed rule upon the affected classes of persons or political subdivisions, including a listing of all fee changes and, whenever possible, a separate justification for each fee change:

There is no probable economic impact and there are no fee changes associated with the rule change for the above classes of persons or any political subdivision.

- E. The probable costs and benefits to the agency and to any other agency of the implementation and enforcement of the proposed rule, the source of revenue to be used for implementation and enforcement of the proposed rule, and any anticipated effect on state revenues, including a projected net loss or gain in such revenues if it can be projected by the agency:

The proposed rule changes are budget neutral.

- F. A determination of whether implementation of the proposed rule will have an economic impact on any political subdivisions or require their cooperation in implementing or enforcing the rule:

The proposed rule changes will not have an economic impact on any political subdivision or require their cooperation in implementing or enforcing the rule changes.

- G. A determination of whether implementation of the proposed rule will have an adverse effect on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act:

The Agency does not anticipate that the proposed rule changes will have an adverse effect on small businesses.

- H. An explanation of the measures the agency has taken to minimize compliance costs and a determination of whether there are less costly or non-regulatory methods or less intrusive methods for achieving the purpose of the proposed rule:

The Agency has taken measures to determine that there is no less costly or non-regulatory method or less intrusive method for achieving the purpose of the proposed rule. Measures included a formal public comment period and tribal consultation.

- I. A determination of the effect of the proposed rule on the public health, safety and environment and, if the proposed rule is designed to reduce significant risks to the public health, safety and environment, an explanation of the nature of the risk and to what extent the proposed rule will reduce the risk:

The proposed rule changes are not designed to reduce any significant risks to the public health, safety, and environment.

- J. A determination of any detrimental effect on the public health, safety and environment if the proposed rule is not implemented:

The Agency anticipates that in the absence of these rule changes, there would not be any detrimental effect on the public health, safety, and environment.

- K. The date the rule impact statement was prepared and if modified, the date modified:

Prepared: October 27, 2021

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY CHAPTER 10. PURCHASING

317:10-1-1. Purpose

~~(a) The purpose of this Chapter is to describe the rules governing the contracting and purchasing requirements of the Oklahoma Health Care Authority (OHCA). The Contracts and Purchasing Divisions are internal divisions of the OHCA. These divisions provide the mechanism for the acquisition of goods, equipment, non-professional and professional services for the operation of the OHCA. These rules are superseded by the Office of Management and Enterprise Services (OMES) Purchasing rules (OAC 260:115) whenever OMES has final authority on an acquisition.~~

~~(b) Different rules apply depending on which of the above three entities is making the acquisition and whether the purchase is for professional services or non-professional services and products. When an acquisition is made by OMES, the OMES Purchasing rules at OAC 260:115 apply. When an acquisition is made by OHCA, these rules must be read in conjunction with the OMES rules.~~

(a) The purpose of this Chapter is to describe the rules governing the contracting and purchasing requirements of the Oklahoma Health Care Authority (OHCA), as directed by 74 O.S. § 85.39. OHCA maintains two (2) internal units that are responsible for the acquisition of goods, equipment, non-professional services, and professional services for the operation of OHCA.

(b) The rules of this Chapter are superseded by the Office of Management and Enterprise Services (OMES) [Oklahoma Administrative Code (OAC) 260:115,] as amended from time to time, whenever OMES has final authority on an acquisition. When an acquisition is made by OMES, the OMES purchasing rules at OAC 260:115 apply. When an acquisition is made by OHCA, the rules of this Chapter should be read in conjunction with the OMES rules.

317:10-1-2. Definitions

The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"**Authority Board**" means the board designated by the Oklahoma Legislature to establish policies and adopt and promulgate rules for the OHCA.

"**Chief Executive Officer**" or "**CEO**" means the highest ranking administrator at the OHCA.

"**Acquisition**" means items, products, materials, supplies, services, and equipment that OHCA acquires by purchase, lease-purchase, lease with option to purchase, or rental.

"**Administrative review**" means the process by which OHCA ensures that a bid submission is complete and accurate; confirms that the bidder understood the solicitation specifications; and ascertains that all materials and any required signatures are submitted.

"**Award**" or "**contract award**" means the process by which OHCA formally notifies a bidder that OHCA has accepted the bidder's bid or offer.

"**Best and final offer**" or "**BAFO**" means a final offer submitted in writing by a bidder initially or after negotiations are completed and containing the bidder's most favorable terms for price, service, and/or products to be delivered.

"**Best price**" means the lowest available price for the goods and/or services that are subject of a solicitation.

"**Best value**" means evaluation criteria which may include but is not limited to the acquisition's operational cost a state agency would incur; the quality of the acquisition, or its technical competency; the reliability of the bidder's delivery and implementation schedules; the acquisition's facilitation of data transfer and systems integration; the acquisition's warranties and guarantees and the bidder's return policy; the bidder's financial stability; the acquisition's adherence to the state agency's planning documents and announced strategic program; the bidder's industry and program experience and record of successful past performance with acquisitions of this complexity; the anticipated acceptance by user groups; and the acquisition's use of proven development methodology, and innovative use of current technologies.

"**Bid**" means any response to a solicitation, including any and all required forms; required documents and information; and supplemental documents and information.

"**Bidder**" means an individual, entity, or service vendor that submits a bid in response to a solicitation.

"**Bid evaluation**" means the process of conducting any evaluative activity that could reasonably be expected to result in determining the value, nature, character, or quality of a bid.

"**Bid evaluator**" means an employee or officer of the State of Oklahoma who is actively engaged in Oklahoma Health Care Authority's (OHCA) process to evaluate, score, or select a bid, regardless of whether a contract is awarded to the bid evaluated and/or scored by that employee or officer.

"**Bid specifications**" means the information OHCA will use for bid evaluation, when such information is exactly detailed within a solicitation and is based on the subject matter of the solicitation, the type of solicitation, and the needs to be met by the supplier(s) awarded a contract from the solicitation.

"**Central Purchasing Division**" means the Central Purchasing Division of the Office of Management and Enterprise Services (OMES).

"**Certification**" means the process of a bidder providing OHCA with an official document attesting to a status or level of achievement in response to a solicitation.

"Certified Procurement Officer" or "CPO" means a state agency procurement official certified as a procurement officer or analyst by the State Purchasing Director under the provisions of the Oklahoma Central Purchasing Act.

"C.F.R." means the Code of Federal Regulations as may be amended from time to time.

"Chief Executive Officer" or "CEO" means the highest-ranking administrator at the OHCA.

"Chief Information Officer" means the chief administrative officer of the Information Services Division of the Office of Management and Enterprise Services.

"Clarification" means a bidder's explanation of all or part of a bid that does not change, alter, or supplement the bid.

"CMS" means the Centers for Medicare & Medicaid Services.

"Closing date/time" means the date and Central Time a solicitation specifies responses must be received by OHCA.

"Competitive solicitation" or "solicitation" means an invitation to bid for the provision of goods or services through specified documents submitted to the Central Purchasing Division or a state agency pursuant to terms, conditions, and other requirements of a solicitation. The competitive solicitation process may be electronic when the terms of the solicitation expressly permit electronic submission and the requirements of applicable statutes and rules are met. When used in this chapter, "competitive solicitation" is synonymous with "invitation to bid," "request for proposal," "request for information," or "request for quotation."

"Conflict plan" means the written statement detailing the accommodations and/or remedies associated with a specific OHCA employee's or officer's conflict of interest in the procurement process or resulting contract.

"Conflict of interest" means a situation in which a person is in a position to derive personal benefit from actions or decisions made in their official capacity, a situation in which the concerns or aims of two (2) different parties are incompatible, a situation prohibited or constrained by law, or a situation that would appear inappropriate to a reasonable individual.

"Contract" means the written and binding agreement between OHCA and the bidder resulting from the competitive solicitation.

"Contracting official" or "contracting officer" means the OHCA CEO or the OHCA officer or employee to whom contracting authority has been delegated by the OHCA CEO, unless specified otherwise.

"Contractor" means any individual or entity contracted with OHCA for the provision of any goods or services. A bidder becomes a contractor upon contract award and execution.

"Days" means calendar days unless otherwise specified.

"Debar" or "debarment" means action taken by the State Purchasing Director to exclude any business entity from inclusion on the Supplier List, bidding, offering to bid, receiving an award of contract with the state of Oklahoma for acquisitions by state agencies, or a contract the OMES awards or administers. Debarment may also result in cancellation of existing contracts with the State of Oklahoma.

"Employee" or "officer" means a natural person that works for OHCA, unless otherwise specified, regardless of title or designation and regardless of manner of appointment, election, or hiring. "Employee or officer" does not mean a member of the Authority Board in the member's capacity as a board member.

"Enrollment activities" means activities performed or conducted by OHCA related to distributing, collecting, or processing enrollment materials, taking enrollments by technological

device or in person, or enrolling or disenrolling, including by algorithm, Medicaid beneficiaries with respect to any health plan or managed care services contract.

"Fiscal year" means the period of time from July 1 of a calendar year through June 30 of the succeeding calendar year.

"Former employee" means a natural person whose work as an employee or officer for OHCA ended by any means at some point prior to the currently referenced moment.

"Health plan" means any person or entity that is licensed as a health maintenance organization (HMO) by the state of Oklahoma to provide or arrange for the delivery of basic health care services to enrollees on a prepaid basis, except for copayments or deductibles for which the enrollee is responsible, or both, that meets the definition of an HMO as delineated in the Oklahoma Medicaid State Plan and that contracts with the State to provide services to enrollees.

"Invoice" means an accounting document issued by an individual or entity that details the goods and/or services provided and the amount of money owed for the goods and/or services when the document conforms to all invoicing provisions of the contract and that records the details of the transaction.

"Managed care entity" or "MCE" means any entity permitted under 42 C.F.R. Part 438 to contract with a state for services provided under a risk contract or a nonrisk contract within the state's Medicaid managed care program, including but not limited to managed care organization (MCO), primary care case management (PCCM), primary care case management entity (PCCM entity), prepaid ambulatory health plan (PAHP), and prepaid inpatient health plan (PIHP).

"Managed care organization" or "MCO" means the same in these rules as defined at 42 C.F.R. § 438.2.

"Managed care program" or "managed care" or "MCP" means a health care delivery system organized to manage cost, utilization, and quality that is operated by a state as authorized under sections 1915(a), 1915(b), 1932(a), or 1115(a) of the Social Security Act and relevant state law.

"Mandatory specification" means any specification of a solicitation when the terms "shall", "must", "will", or "is required" are used to describe, define, or announce the specification. This definition refers only to the use of such words in a solicitation and does not refer to the use of such words in this chapter.

"Material deficiency" or "material deviation" means a bidder's failure to provide information necessary to evaluate a competitive solicitation.

"Medicaid" means the medical assistance program jointly administered by the federal and state governments and authorized by 42 U.S.C. § 1396a to provide health care benefits for certain low-income persons.

"Minor deficiency" or "minor informality" means an immaterial defect in a bid or variation in a bid from the exact requirements of a competitive solicitation that may be corrected or waived without prejudice to other bidders. A minor deficiency or informality does not affect the price, quantity, quality, delivery, or conformance to specifications and is negligible in comparison to the total cost or scope of the acquisition.

"Multi-award" means the process by which OHCA formally, by written determination, notifies two or more bidders that OHCA has accepted the bidders' bid to furnish an indefinite quantity or category of item, where more than one supplier is needed to meet the contract requirements for quantity, delivery, service, or product compatibility.

"Non-collusion certification" means a certification submitted by a bidder with any competitive bid or contract executed by the state for goods or services in accordance with 74 O.S. § 85.22.

"Nonresponsive" means a bid or proposal that has been determined not to conform to essential requirements of a solicitation.

"OAC" means the Oklahoma Administrative Code as may be amended from time to time.

"Office of Management and Enterprise Services" or "Office" or "OMES" means the Oklahoma Office of Management and Enterprise Services.

"Oklahoma Central Purchasing Act" means 74 O.S. §§ 85.1 et seq.

"Oklahoma Health Care Authority" or "OHCA" or "Authority" means the single state agency designated to administer the medical programs which make available appropriate medical services to eligible individuals through the Title XIX Medicaid Program and which has authority to procure, administer and monitor contracts, issue performance deficiency notices, and assess non-compliance damages.

"OHCA Board" means the board designated by the Oklahoma Legislature to establish policies and adopt and promulgate rules for the OHCA.

"Oklahoma Information Technology (IT) Accessibility Standards" or "IT Accessibility Standards" means the accessibility standards adopted by the Office of Management and Enterprise Services (Reference OAC 250:15) to address all technical standard categories of Section 508 of the Rehabilitation Act (Reference 29 U.S.C. § 794d), as amended by the Workforce Investment Act of 1998 (Reference P.L. 105-220, August 7, 1998) and adopted at 62 O.S. §§ 34.28, 34.29, 34.30, and 34.16, to be used by each state agency in procuring, maintaining, or using information technology, and in the development and implementation of custom-designed information technology systems, web sites, and other emerging information technology systems.

"Oral presentation evaluation" means the process, through the bidder's participation in an interactive dialogue or non-interactive presentation, by which OHCA assesses a bidder's capability, past performance, work plans or approaches, staffing resources, transition plans, sample tasks, or fit with the OHCA.

"O.S." or "Okla. Stat." means the Oklahoma Statutes as may be amended from time to time.

"Permissible specification" means any specification in a solicitation when the terms "can", "may", or "should" are used to describe, define, or announce the specification. This definition refers only to the use of such words in a solicitation and does not refer to the use of such words in this chapter.

"Privatize" means to enter into contract for the performance of a duty or function which is currently being performed by a state employee.

"Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring any goods or services. The term also means all functions that pertain to the obtaining of any goods or services, including but not limited to the description of requirements, selection, and solicitation of sources, preparation and award of contracts, and all phases of contract administration.

"Professional services" means services which are predominantly advisory or intellectual in character, involve privatized functions, or involve support rather than supplying equipment, supplies, or other merchandise. Professional services include those services requiring special, usually advanced, education, or skill.

"Prejudice" means the effect on an affected bidder's substantial rights when a procurement decision related to a different bidder, if such decision is found to be in error, would yield a more favorable result for the affected bidder if the decision error were corrected.

"Purchasing" means the Purchasing Department of the Oklahoma Health Care Authority.

"Purchasing manager" means the Purchasing Manager of the Oklahoma Health Care Authority.

"Registered supplier" means a supplier that registers with the Central Purchasing Division pursuant to 74 O.S. § 85.33.

"Remedy" means to cure, alter, correct, or change.

"Request for information" or "RFI" means a non-binding procurement practice used to obtain information, comments, and feedback from interested parties or potential suppliers prior to issuing a solicitation.

"Request for proposal" or "RFP" means a type of solicitation OHCA or the State Purchasing Director issues to suppliers to request submission of proposals for acquisitions.

"Request for quotation" or "RFQ" means a simplified written or oral solicitation OHCA or the State Purchasing Director issues to suppliers to request submission of a quote for acquisitions.

"Requisition number" means an identifier OHCA or OMES assigns to a requisition.

"Responsible supplier" means a supplier who demonstrates capabilities, in all respects, to fully perform the requirements of a contract and which will ensure good faith performance, including but not limited to finances, credit history, experience, integrity, perseverance, reliability, capacity, facilities and equipment, and performance history.

"Responsive" means a bid or proposal that has been determined to conform to the essential requirements of a solicitation.

"Risk contract" means a contract between OHCA and a managed care organization (MCO), prepaid inpatient health plan (PIHP), or prepaid ambulatory health plan (PAHP), as those terms are defined at 42 C.F.R. § 438.2, under which the contractor assumes risk for the cost of the services covered under the contract and incurs loss if the cost of furnishing the services exceeds the payments under the contract.

"Sole brand acquisition" means an acquisition that by specification restricts the acquisition to one manufacturer or brand name.

"Sole source acquisition" means an acquisition that by specification restricts the acquisition to one supplier.

"Split purchase" means dividing a known quantity or failing to consolidate a known quantity of an acquisition for the purpose of evading a competitive bidding requirement.

"State Purchasing Director" means the director of the Central Purchasing Division of the Office of Management and Enterprise Services appointed by the OMES Director and includes any employee or agent of the State Purchasing Director, acting within the scope of delegated authority. (Reference 74 O.S. § 85.2) Unless otherwise stated, the term includes employees of the Central Purchasing Division and state agency purchasing officials certified by the State Purchasing Director to which the State Purchasing Director has lawfully delegated authority to act on his or her behalf. In regard to the procurement of information technology or telecommunications, the term means the Chief Information Officer of the Office of Management and Enterprise Services.

"Statement of work" or "scope of work" means a detailed description of the work which OHCA requires a contractor or supplier to perform or accomplish.

"Supplier" or "vendor" means an individual or business entity that sells or desires to sell acquisitions, including goods and/or services to OHCA. (Reference 74 O.S. § 85.2)

"Supplier list" means a list of individuals or business entities that have registered with the Central Purchasing Division in order to receive notification of solicitations for commodities specified in their registration application.

"Supplier performance evaluation" means information a state agency or OMES Procurement provides to the State Purchasing Director, in a manner the OMES Director prescribes, that documents the quality of service or products provided by a supplier.

"Supplier registration" means a process a supplier uses to register with the Central Purchasing Division to automatically receive solicitations based on a commodity class for a specified period of time.

"Technical proposal evaluation" means the process, based on established criteria and reliant on evaluators' expertise in assessing the strengths and weaknesses of multiple bids, by which OHCA measures the extent to which a bid will meet OHCA's needs.

"U.S.C." means the United States Code as may be amended from time to time.

"Value based" or "value-based purchasing" means the intentional linking of cost to the OHCA's perception of the value of goods or services. In a health plan or managed care contract, these terms refer to provider payments made by the health plan or managed care entity based on improved performance by health care providers.

317:10-1-12. Protest of award

(a) Protests of awards made by ~~the Authority~~OHCA under 74 Okla. Stat. § ~~85.5T~~85.5N are addressed at OAC 317:2-1-1 et seq.

(b) Bidders who wish to protest any other award shall follow the process outlined in the ~~Office of Management and Enterprise Services~~OMES rules at OAC 260:115-3-19.

317:10-1-16. Delegation of authority

The authority to procure needed products and services for ~~the Authority~~OHCA has been delegated to ~~the Authority~~OHCA from the Office of Management and Enterprise Services, Central Purchasing Division. The ~~Authority~~OHCA Board delegates authority for expenditure of funds to the CEO and other ~~Authority~~OHCA officers and personnel according to the dollar limits and types of products stated in (1), (2) and (3) of this Section. Within this authority, the CEO may delegate in writing to other specific individuals the responsibility for the performance of the procurement duties.

(1) **Supply and non-professional services acquisitions.** Each division director or supervisor may initiate any supply or non-professional services acquisition which is within his or her authorized division budget and approved by the CEO or designee. ~~Any single acquisition of this kind over \$5,000 up to \$500,000 must be approved by the CEO, Executive Staff or designee.~~ Any single acquisition of this kind over ~~\$500,000~~\$1,000,000 must be approved by the ~~Authority~~OHCA Board. A contract amendment that would increase the total original contract acquisition cost to an amount that equals or exceeds ~~\$500,000~~\$1,000,000 for a supply or non-professional services contract must be prior approved by the ~~Authority~~OHCA Board. Any amendment to a contract that would result in a ~~10 percent~~ten percent (10%) or greater increase in the total acquisition cost originally approved by the OHCA Board must be submitted to the OHCA Board for prior approval.

(2) **Professional service contracts.** Acquisitions of professional services must be approved by the CEO or designee. All professional service contracts over ~~\$125,000~~\$1,000,000 must be approved by the ~~Authority~~OHCA Board. A contract amendment that would increase the total original contract acquisition cost to an amount that equals or exceeds ~~\$125,000~~\$1,000,000 for a professional service contract must be prior approved by the ~~Authority~~OHCA Board. Any amendment to a contract that would result in a ~~25 percent~~twenty-five percent (25%) or greater

increase or a ~~\$250,000~~\$1,000,000 or greater increase in the total acquisition cost originally approved by the ~~Authority~~OHCA Board must be submitted to the ~~Authority~~OHCA Board for prior approval. Board approval is not required if the increase in total contract acquisition cost results from the exercise of a price increase methodology, option for additional work, or option to renew that was contained in the previously approved contract.

(3) **Interagency/intergovernmental agreements.** All agreements with another state agency or public agency must be approved by the CEO or designee, but are exempt from the ~~Authority~~OHCA Board approval.

317:10-1-21. Procurement ethics, prohibited conduct

(a) **Standard of conduct.** The Oklahoma Central Purchasing Act, State Ethics Commission rules, and other state laws contain regulations, prohibitions, and penalties governing procurement ethics. Transactions relating to the public expenditure of funds require the highest degree of public trust and impeccable standards of conduct.

(b) **One (1) year prohibition on certain contracts.** For one (1) year after the employment termination date of any employee or officer, OHCA is prohibited from entering into a sole source contract, a professional service contract, or a contract for the services of that employee or officer. Refer to 74 O.S. § 85.42(A). An agency may enter into a sole source contract or a contract for professional services at any time with a person who is a qualified interpreter for the deaf. Reference to 74 O.S. § 85.42(D).

(c) **Supplier gratuities.** Employees or officers of the Purchasing and Contracts Development unit, acting within the scope of delegated authority, or any member of their immediate family, under the Oklahoma Central Purchasing Act shall not accept any gift, donation, or gratuity for himself or any member of his immediate family from any supplier or prospective supplier of any acquisition covered by the Oklahoma Central Purchasing Act. This subsection shall not apply to exceptions to the definition of "anything of value" established in rules promulgated by the Oklahoma Ethics Commission.

(d) **State requirement for one (1) year prohibition on certain state officers' or employees' employment with a supplier.** For a period of one (1) year from the date that any contract to privatize is awarded by OHCA, any state officer or employee who exercised discretionary or decision-making authority in awarding a specific contract to privatize is prohibited from becoming an officer or employee of a business organization which is party to that specific contract to privatize. If, within the prohibited period and in violation of state law, any state officer or employee who exercised discretionary or decision-making authority in awarding a specific contract to privatize becomes an officer or employee of a business organization which is party to that specific contract to privatize, then the business organization is prohibited from contracting with OHCA for one (1) year from the date of the violation of state law. Refer to 74 O.S. § 590.

(e) **Agency contract or agreement open for legislative inspection.** Upon request, a contract or any other form of agreement made by OHCA will be open for inspection to any member of the Legislature. OHCA will not direct, put in a contract, or in any way disallow a vendor, client, employer or independent contractor, person, or any other entity from contacting or communicating with any member of the Legislature. Refer to 74 O.S. § 464.1.

(f) **Federal requirement for conflict-of-interest safeguards pertaining to any contract for health plan or managed care services.** Any contract awarded for health plan or managed care services and subject to 42 C.F.R. Part 438 necessitates state conflict-of-interest safeguards at least as effective as those specified at section 27 of the Office of Federal Procurement Policy Act. Refer

to 42 C.F.R. § 438.58, citing 41 U.S.C. § 423. In addition to this subsection, OAC 317:10-1-22 describes processes pertaining to the conflict-of-interest safeguards in this section.

(1) The following person(s) shall not, except as provided by law, knowingly disclose a contractor bid or proposal information or source selection information before the award of an OHCA procurement contract to which the information relates:

(A) When such person is:

(i) A present or former employee or officer;

(ii) Acting or has acted for or on behalf of OHCA with respect to a procurement; or

(iii) Advising or has advised OHCA with respect to a procurement; and

(B) By virtue of that office, employment, or relationship has or had access to contractor bid or proposal information or source selection information.

(2) A person shall not, other than as provided by law, knowingly obtain contractor bid or proposal information or source selection information before the award of an OHCA procurement contract to which the information relates.

(3) If an employee or officer who is personally and substantially participating in a procurement under this Section, contacts or is contacted by a procurement bidder regarding possible non-OHCA employment, the employee or officer shall promptly report the contact in writing to the employee's or official's supervisor and to the designated OHCA ethics official (or designee) and either:

(A) Reject the possibility of non-OHCA employment; or

(B) Disqualify himself or herself from further personal and substantial participation in that procurement until such time as OHCA has authorized the employee or official to resume participation in such procurement on the grounds that:

(i) The bidder is no longer a participant in the procurement; or

(ii) All discussions with the bidder regarding possible non-OHCA employment have terminated without an agreement or arrangement for employment.

(4) A former employee or officer shall not accept compensation from a contract-awarded bidder as an employee, officer, director, or consultant of that bidder within a period of one (1) year after such former employee or officer functioned within the scope of employment as:

(A) The procuring contracting officer, the source selection authority, a member of an evaluation committee, or the chief of a financial or technical evaluation team in a procurement in which that contract-awarded bidder was selected for award of a contract in excess of \$10,000,000;

(B) A program manager, deputy program manager, or administrative contracting officer for a contract in excess of \$10,000,000 awarded to that contract-awarded bidder; or

(C) A primary decision maker who personally made one (1) or more of the following decisions on behalf of OHCA:

(i) To award a contract, subcontract, modification of a contract or subcontract, or a task order or delivery order for that contract-awarded bidder valued in excess of \$10,000,000;

(ii) To establish overhead or other rates applicable to a contract or contracts for that contract-awarded bidder valued in excess of \$10,000,000;

(iii) To approve issuance of a contract payment or payments to that contract-awarded bidder valued in excess of \$10,000,000; or

(iv) to pay or settle a claim in excess of \$10,000,000 with that contract-awarded bidder.

(5) A former employee or officer who accepts compensation from any division or affiliate of a contract-awarded bidder that does not produce the same or similar products or services as the entity of the contract-awarded bidder that is responsible for the contract does not violate this section.

(6) With regard to any current or former employee or officer or any bidder who violates this subsection (f), OHCA may take any administrative action and pursue any penalty allowed by state or federal law.

(7) Any employee or officer or former employee or officer may request advice from the appropriate designated OHCA ethics official regarding whether the employee or officer or former employee or officer is or would be precluded by subsection (f)(4) of this section from accepting compensation from a particular contractor.

317:10-1-22. Conflicts of interest

(a) Types of conflicts of interest. Three (3) types of conflict-of-interest forms may be used for OHCA to clear conflicts related to procurement.

(1) **General conflicts of interest.** OHCA requires all employees or officers to sign general conflict-of-interest forms annually.

(2) **Contract-specific conflicts of interest.** OHCA requires specific employees or officers, as described within this subsection, to sign a contract-specific conflict-of-interest form related to a specific contract when deemed appropriate to meet any applicable federal or state law or regulation and to avoid impropriety or the appearance of impropriety in connection with the procurement process or the administration of the specific contract. The contract-specific conflict-of-interest form will inform the employee or officer of rights and responsibilities related of role as related to a specific contract, including any potential restrictions on future employment or other business connections with the contractor or with OHCA, and will record any conflicts that pre-date the signing of the form or that arise at any point in time thereafter until the contract is terminated.

(3) **Evaluator-specific conflicts of interest.** OHCA requires employees or officers of any agency or department of the State to sign an evaluator-specific conflict-of-interest form, whenever the employee or officer is appointed, selected, or approved as a bid evaluator or performs any duty of a bid evaluator for a specific contract. The evaluator-specific conflict-of-interest form will inform the employee or officer of rights and responsibilities related to the role of bid evaluator, including any potential restrictions on future employment or other business connection with the contractor or with OHCA, and will record any conflicts that pre-date the signing of the form or that arise at any point in time thereafter until the evaluation is complete and closed. If a bid evaluator is removed from the bid evaluation for any reason, including potential conflict of interest, a substitute bid evaluator with similar expertise will be added to the bid evaluation after signing an evaluator-specific conflict-of-interest form.

(b) Forms meet or exceed legal standards. All conflict-of-interest forms shall meet or exceed the applicable legal standards controlling the type of contract and/or type of employee or officer involvement in procurement or administration of a contract, including but not limited to 74 O.S. § 85.42(A), 74 O.S. § 590, and 41 U.S.C. § 423.

(c) Identification of conflicts of interest. OHCA will identify conflicts of interest, plan any accommodation, and manage any employee disciplinary action.

(1) The OHCA contracting officer will identify all employee or officer positions required to sign a specific conflict-of-interest form or an evaluator-specific conflict of interest form. For

any solicitation for health plan or managed care services, the contracting officer will identify, at minimum, all employees or officers engaged in enrollment activities, when those employees or officers are internally titled manager or above, and all employees and officers engaged as bid evaluators.

(2) OHCA's Human Resources (HR) Department will obtain conflict-of-interest forms:

(A) For general conflict-of-interest forms, from each employee or officer at the time of hiring and annually thereafter.

(B) For contract-specific conflict-of-interest forms, from each employee or officer in an identified position prior to the employee's or officer's participation in contract- or solicitation-specific activities.

(C) For evaluator-specific conflict-of-interest forms, from each employee or officer identified as an evaluator prior to the employee's or officer's participation in evaluation-specific activities.

(3) OHCA HR and OHCA's Legal Department will review the executed conflict-of-interest forms.

(4) If a potential conflict is identified, a conflict plan will be presented to the employee or officer. The conflict plan will include, at minimum, guidelines that the employee or officer must follow to avoid an actual conflict.

(5) The employee or officer will determine if the conflict plan can be accommodated and respond accordingly.

(6) If the accommodation does not resolve the issue, then the employee or officer will face disciplinary action up to and including termination of employment.

(d) Each employee or officer has a responsibility to notify OHCA HR within one (1) business day of becoming aware of a potential conflict, regardless of whether the employee or officer previously executed a conflict-of-interest form. Upon notification, OHCA HR will take appropriate action to identify the potential conflict in writing, either as part of the existing conflict-of-interest form or as a new conflict-of-interest form; develop a conflict plan; and present the conflict plan to the employee or officer.

317:10-1-23. Value-based purchasing

(a) Unless otherwise prohibited by law, OHCA may engage in value-based purchasing with regard to any contract for goods, services, or professional services.

(b) Unless otherwise prohibited by law, OHCA may include in any contract for health plan or managed care services any concept of value-based purchasing as to the transaction between OHCA and the health plan or managed care entity.

(c) Unless otherwise prohibited by law, OHCA may include in any contract for health plan or managed care services any concept of value-based purchasing as to the transaction underlying the provision of health care services or items by providers contracted with any health plan or managed care entity.

317:10-1-24. Bidder obligations arising from bid submission

(a) One (1) bid. Bidders may submit only one bid in response to any solicitation. Except as requested by OHCA, no bid may be changed after the response due date and time. If the bidder needs to change a submitted bid prior to the response due date and time, the bidder will withdraw

the originally submitted bid and submit a new bid to OHCA by the response date and time. Bidders may withdraw and resubmit a bid at any time prior to the submission deadline. As part of the resubmission process, the bidder will acknowledge in writing that the resubmitted bid supersedes all previously submitted bids by including the following statement on the superseding bid cover page, "This bid supersedes the bid previously submitted". In the body of the submission transfer, whether by email or otherwise, the resubmitted bid should contain the solicitation number and solicitation response due date and time.

(b) Bidder duties. The bidder shall submit any bid:

- (1) In strict conformance with the instructions provided to bidders along with a completed "Responding Bidder Information" form and any other forms required by the solicitation;
- (2) Electronically;
- (3) With a completed certification statement, as described in the solicitation, that uses the bidder's legal name and has been executed by an authorized person with full knowledge and acceptance of all certificate provisions;
- (4) According to the "Technical Proposal Requirements" of the solicitation;
- (5) With relevant information for a designated contact to receive notice, approvals, and requests that are allowed or required by the terms of the solicitation;
- (6) As firm, including a guarantee that unit prices are correct, for a minimum of one hundred eighty (180) days after the solicitation closing date; and
- (7) In accordance with 74 O.S. § 85.40, requiring the bidder to include in the total bid price all travel expenses, including but not limited to transportation, lodging, and meals, to be incurred by a bidder in performance of the awarded contract.

(c) Bidder's acknowledgements. By submitting a bid, the bidder promises, acknowledges, and agrees that:

- (1) The bidder will adhere to any additional terms OHCA deems necessary to the performance of the contract, including but not limited to terms related to the contractor's need to access, process, or store Medicaid beneficiary data;
- (2) All costs incurred by a bidder in participating in the procurement process is the sole responsibility of the bidder, and the bidder will not be reimbursed for or awarded damages for such costs;
- (3) If a bidder fails to notify the contracting officer of an ambiguity, conflict, discrepancy, omission, or other error in the procurement process or in any of the documents provided by OHCA that is known to the bidder, or that reasonably should be known by the bidder, the bidder accepts the risk of submitting a bid and, if awarded the contract, will not be entitled to additional compensation, relief, or time by reason of the error or its later correction; and
- (4) Bidder waives any error in the procurement process or documents which is known to the bidder or reasonably should have been known, and such error will not be the grounds of a bid protest.

(d) Indemnification. By submitting a bid, the bidder understands, accepts, acknowledges, and agrees to this paragraph in its entirety. OHCA will not indemnify a bidder, any subcontractor, or any other party to an awarded contract. Any contract between the selected bidder and OHCA will not contain any terms limiting the liability of the bidder or providing indemnification by OHCA in favor of the bidder or any third parties. The State of Oklahoma and its agencies do not hold an individual or a private entity harmless from liability or provide indemnity to a private entity or individual. Any attempt by the bidder to add indemnification or limitation of liability provisions in favor of the bidder or third parties to the definitive contract may render the bidder's bid

nonresponsive and subject to rejection. Should OHCA accept a bid that attempts to add indemnification or limitation of liability provisions in favor of the bidder or third parties, such attempts are severable from the remainder of the bid and have no effect on any awarded contract. At no time and in no way will OHCA be deemed to have waived this paragraph through action or inaction.

(e) **Conflict of laws.** With regard to the procurement process to which a bid is submitted and any business relationship or contract resulting from such procurement process, by submitting a bid, the bidder understands, accepts, acknowledges, and agrees:

(1) That the undertaking and all matters arising out of or relating to the undertaking, including all protests, claims, causes of action, controversies, or matters in dispute between OHCA and the bidder—whether sounding in contract, tort, statute, regulation, or otherwise—shall be governed by, construed, interpreted, and enforced in accordance with the substantive and procedural laws of the State of Oklahoma, including its statutes of limitations, without giving effect to any choice of law or conflict of laws rules or provisions, whether of the State of Oklahoma or any other jurisdiction, that would cause the application of the laws of any jurisdiction other than the State of Oklahoma;

(2) To exclude application of the United Nations Convention on Contracts for the International Sale of Goods; and

(3) That a final judgment in any matter described in (e)(1) of this Section is conclusive and binding and may be enforced in any other jurisdiction.

317:10-1-25. Property of the state

Any bid, including all related and submitted documents and information, is part of the public record(s) and is subject to disclosure; unless otherwise specified in the Oklahoma Open Records Act, the Central Purchasing Act, or other applicable law. All material submitted by a bidder becomes the property of the State of Oklahoma upon submission and will be a matter of public record, subject to the procedures for treatment of proprietary information. OHCA has the right to use all concepts described in any bid, regardless of whether such bid is accepted. By any secured means, including electronic transmission via secure file transfer protocol, OHCA has the right to transmit all material submitted as part of or in connection with a bid, including proprietary information, to any professional services contractor then or afterward contracted with OHCA for provision of professional services related to the solicitation, award, or administration of the contract.

317:10-1-25.1. Proprietary or confidentiality claims

(a) Unless otherwise specified in the Oklahoma Open Records Act, Central Purchasing Act, or other applicable law, documents and information that a bidder submits as part of or in connection with a bid are public records and subject to disclosure after the contract has been awarded pursuant to OAC 260:115-3-9.

(1) No portion of a bid shall be considered confidential after award of the contract except, pursuant to 74 O.S. §85.10, information in the bid determined to be confidential by the State Purchasing Director or delegate.

(2) A properly submitted confidentiality claim of a potential awardee is reviewed and determined prior to award.

(3) A properly submitted confidentiality claim of a non-awarded bidder is reviewed and determined only when responding to an open records request concerning the bid.

(b) Among the parties to a solicitation, OHCA is the sole and final determiner of the proprietary or confidential nature of a bid in part or in whole.

(1) OHCA has no responsibility to independently review a bid, including any associated documentation or information, for a potential proprietary or confidentiality claim.

(2) OHCA will not consider a proprietary or confidentiality claim if a bid fails to comply with the requirements of this section, the solicitation, and applicable law, including OAC 260:115-3-9. Nonconforming bids will be subject to disclosure pursuant to State law.

(3) A bidder, who wishes to seek an exemption from disclosure under the Oklahoma Open Records Act or other statutory or regulatory requirements, is responsible for asserting any right of confidentiality that may exist. The OHCA will not assert a right of confidentiality on behalf of a bidder.

(c) To claim any portion of a bid as proprietary or confidential, the bidder will:

(1) Specifically identify what information is considered by the bidder to be confidential;

(2) Enumerate the specific grounds, based on applicable laws, which support treatment of the information as exempt from disclosure;

(3) Explain why disclosure is not in the best interest of the public if the information is incorporated into an awarded contract;

(4) Submit all information considered confidential under separate cover as described below; and

(5) Include, for efficient evaluation, the content considered confidential in applicable sections of the bid.

(d) Any bidder with bid information the bidder considers confidential must submit an additional electronic copy of the bid with the claimed information redacted (marked out to be illegible). The additional copy must be clearly labeled "Redacted Copy." If the bidder provides a copy of its bid with proprietary and confidential information redacted and OHCA appropriately supplies the redacted bid to another party under the Oklahoma Open Records Act or other statutory or regulatory requirements, the bidder agrees to indemnify OHCA and to defend the bidder's interest in protecting the referenced redacted material.

(e) OHCA does not consider as confidential a bid marked in total as proprietary and/or confidential (versus specific documents or portions of documents within a bid). Likewise, unless specifically referenced otherwise in a solicitation, resumes, pricing, marketing materials, business references, additional terms proposed by a bidder, and subcontractor information are not confidential and are not exempt from disclosure under the Oklahoma Open Records Act. The foregoing list is not exhaustive but is intended to address information often marked confidential that is not exempt from disclosure.

(f) Subject to the provisions of subsections (a)-(e) above, bids will be open for public inspection following contract award.

317:10-1-26. Withdrawal from solicitation

(a) At any time prior to the submission deadline of any solicitation, a bidder may withdraw a bid and remove itself from consideration by providing written notification, in the form specified in OAC 260:115-3-13, to the OHCA sole point of contact as identified in the solicitation. OHCA does not permit a bidder to withdraw a bid after the response due date and time except as authorized by the OHCA CEO after the bidder provides sufficient proof that the bidder included a significant error in the bid.

(b) Unless properly withdrawn, the submitted bid is deemed to be a binding offer on the part of the bidder.

317:10-1-27. Binding bids

OHCA considers all bids to be firm representations that the responding bidder has carefully investigated and will comply with all OHCA and State terms and conditions relating to the solicitation. A bidder whose bid is accepted for evaluation will be bound by the terms of the solicitation and the contents of the bid for the duration of the solicitation. The bidder will be bound by the terms in its solicitation response unless or until OHCA instructs the bidder to perform any function reflected in the solicitation response in a modified way to the extent it does not substantially alter the specifications or statement of work as defined in the solicitation. Bidders awarded a contract will be governed foremost by applicable law, then by the terms of the solicitation, including any associated model contract, then by any non-rule policy documents created by OHCA for the purposes of interpreting and implementing contract terms.

317:10-1-28. Contracting officer's actions

(a) The contracting officer may reject a bid for any valid reason, including but not limited to those listed at OAC 260:115-7-32(8) and the bidder's:

- (1) Failure to submit required information;
- (2) Failure to submit the bid by the response date and time unless OHCA has authorized acceptance of bids due to a significant error or incident that occurred which affected the receipt of a bid, per OAC 260:115-3-11;
- (3) Failure to comply with bidder instructions or solicitation requirements;
- (4) Failure to meet any mandatory specification of the solicitation; however, failure to meet a permissible specification of the solicitation will not be a valid reason to reject a bid;
- (5) Failure to submit the bid by the strict deadline as described by date and time within the solicitation; and
- (6) Attempted or actual inclusion or imposition of terms or conditions that would modify the requirements of the solicitation, require OHCA to indemnify the bidder or a third party, or limit the bidder's liability.

(b) The contracting officer may take any reasonable action with regard to a solicitation, including but not limited to:

- (1) Waiving minor irregularities in any bid if determined to be in the best interest of the State. If granted, a waiver will in no way modify the requirements of the solicitation or the obligations of bidders awarded contracts;
- (2) Awarding a contract based on a solicitation and the bid of any selected bidder;
- (3) Awarding the contract to more than one (1) bidder;
- (4) Rejecting any or all bids received, if deemed to be in the best interest of the State;
- (5) Requesting clarification or correction of any bid;
- (6) Amending any solicitation or any segment of any solicitation;
- (7) Canceling any solicitation, if determined to be in the best interest of the State; or
- (8) Discontinuing the solicitation process at any time prior to contract award.

(c) The contracting officer may question the grade and quality of any acquisition delivered to the agency.

- (1) The contracting officer or delegate has sole discretion in determining whether the acquisition meets the grade and quality specified in the contract.

(2) If the acquisition fails to meet the contract-specified grade and/or quality, OHCA may take remedial action with the appropriate supplier. Refer to 74 O.S. § 85.6.

317:10-1-29. Deficiencies

In accordance with the OAC 260:115-7-32(10), OHCA has the right but is not required to waive minor deficiencies or informalities if OHCA determines the deficiencies or informalities do not prejudice another bidder. OHCA may also permit bidders to cure certain non-substantive deficiencies if there is sufficient time prior to the award of the contract.

317:10-1-30. Submission of questions

(a) A bidder may submit written questions by email only to the OHCA sole point of contact as designated in the solicitation and using the "Questions" form, in original format, included in the Bidder's Library.

(b) OHCA will provide written answers to all technical bid and price questions received on or before the dates specified in the solicitation for questions and answers. Answers will be made publicly available in the form of one or more solicitation amendments posted to the Bidder's Library. Only posted answers will be considered official and valid. A bidder will not rely upon, take any action upon, or make any decision based upon any verbal communication with any State employee.

317:10-1-31. Bidder's conference

OHCA may hold a bidder's conference at OHCA offices or virtually on the date and time specified in the solicitation. Additional information about the bidder's conference, if any, will be provided in advance of the session.

317:10-1-32. Bid evaluation

A responsive bid that is not otherwise rejected will proceed to bid evaluation, which will be conducted in accordance with the solicitation. Within any solicitation, the bid specifications for evaluation will be provided and will be based on the subject matter of the solicitation, the type of solicitation, and the needs to be met by the supplier(s) awarded a contract from the solicitation.

(1) The bid evaluation may consist of one (1) or more evaluative activities, including but not limited to:

(A) Best price review;

(B) Best value review;

(C) Certifications;

(D) Administrative review;

(E) Technical proposal evaluation;

(F) Oral presentation evaluation; and

(G) Any other activity that could reasonably be expected to result in determining the value, nature, character, or quality of the bid.

(2) Bids responding to request for quotation will be evaluated solely on a "best price" basis.

(3) Bids responding to request for proposal will be evaluated on a "best value" basis unless the request for proposal specifies otherwise.

(4) A bidder's past performance may be considered when evaluating a bid.

(5) No evaluator acting in their role as an evaluator will make any decision regarding procurement, including but not limited to which, if any, bidder(s) will or will not be awarded

the contract, whether a bid will or will not be rejected, and whether a solicitation will be continued or canceled. Evaluators, individually or collectively, may provide bid evaluation information and recommendations to the contracting official. A record of evaluators' numeric scores of bids, made by evaluators individually or collectively, will be maintained as part of the acquisition file.

(6) The contracting official will make all decisions regarding the procurement, including but not limited to which, if any, bidder(s) will or will not be awarded the contract, whether a bid will or will not be rejected, and whether a solicitation will be continued or canceled.

317:10-1-33. Contract award

(a) **Time of award.** OHCA will not award a contract at the time of a bid opening but, if at all, only upon completion of the following:

(1) Bid evaluation;

(2) Documentation of evaluation on each bid;

(3) Determination of the lowest and best or best value bidder;

(4) Verification of Oklahoma and federal debarment status;

(5) Verification, pursuant to applicable provisions of law, that the supplier is registered with the Secretary of State and maintains appropriate franchise tax payment status pursuant to 68 O.S. §§ 1203 and 1204; and

(6) Completion of any award-related administrative tasks.

(b) **Award by item.** If the procurement documents do not specify an all or none bid, more than one (1) bidder may be awarded a contract by item or groups of items.

(c) **No contract award.** OHCA may refrain from awarding a contract during any solicitation when:

(1) No bid meets the requirements of the solicitation;

(2) All bids exceed fair market value for the acquisition;

(3) The bid price exceeds available funds available to OHCA;

(4) OHCA no longer requires the acquisition in the form or manner specified; or

(5) Not awarding the contract is determined to be in the best interest of the state.

(d) **Evaluation tie.** Whenever it is determined that two (2) or more bids are equal, the contracting officer will determine the successful bid by a coin toss.

(e) **Notification of successful bidder.** OHCA will notify the successful bidder(s), if any, within a reasonable time after determination of the contract award.